

No palm oil in the EU-Indonesia trade and investment agreement

KEYPOINTS

- Palm oil production in Indonesia leads to large scale habitat and biodiversity loss, is an important driver for climate change, creates significant conflicts with local communities and is infested with human and worker rights violations.
- The envisaged EU-Indonesia free trade agreement could ramp up the export of Indonesian palm oil to Europe and thus increase the damage. To avoid this, **palm oil should be excluded entirely from the agreement.**
- Instead, domestic reforms are needed in Indonesia to tackle the underlying causes of the expansion of palm oil cultivation, while the EU should immediately **phase out palm oil from its biofuel policy and ban the import of illegal and unsustainable palm oil.**



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INDONESIA, THE EU AND PALM OIL

Indonesia is the world's largest producer and exporter of palm oil, accounting for 55 per cent of global production and 62 per cent of global exports in 2017¹.

The EU is the world's largest importer of palm oils, with Indonesia accounting for 51 per cent of its imports in 2017. Palm oil is the single most imported good from Indonesia into the EU, making up about 15% of the Indonesian exports to the EU. Trade in palm oil and its products between the EU and Indonesia has seen a significant growth over the last years. EU imports have increased by 28% in 2017². Palm oil is imported in the EU for various uses: for food and cosmetic industries, for heating, as well as for biodiesel.

The production, processing and trade in palm oil products in Indonesia by domestic and foreign (including European) companies has caused **tremendous environmental, social, human rights and labour problems.**

For decades, enormous areas of primary and secondary forests have been cleared and burned for palm oil plantations, local communities have been deprived of their lands, there is a systemic occurrence of labour rights violations in the sector, workers have been treated very poorly, the environment has been polluted and deforestation made Indonesia a major contributor to climate change. Voluntary industry-led certification schemes such as the Round Table on Sustainable Palm Oil have proven to be insufficient.

Friends of the Earth Europe and Walhi do not believe that large-scale monoculture palm oil production is sustainable. On the contrary, it is an expression of a failed agricultural system, which is environmentally and socially damaging.

1. Sustainability Impact Assessment (SIA) in support of Free Trade Agreement (FTA) negotiations between the European Union and Republic of Indonesia. Draft Inception Report. Available at: http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156900.pdf (Accessed 9th November 2018)

2. https://eeas.europa.eu/delegations/indonesia/46646/palm-oil-outcome-trilogue-eu%E2%80%99s-renewable-energy-directive-red-ii_nb

THE EU-INDONESIA FREE TRADE AGREEMENT

Negotiations on a free trade agreement between Indonesia and the EU (CEPA) started in July 2016. Six negotiation rounds have been held so far. According to the European Commission, a future trade agreement will cover a broad range of issues “including customs duties and other barriers to trade, services and investment, access to public procurement mar-

kets, as well as competition rules and protection of intellectual property rights.”³ If the agreement between the EU and another ASEAN country, Vietnam, is anything to go by, tariff reductions for 99% of all traded goods can be expected and would in all likelihood include palm oil and its products.

WHY CEPA IS DANGEROUS FOR PEOPLE AND PLANET

The free trade agreement between the EU and Indonesia could increase and lock-in trade in palm oil in several ways.

According to the interim sustainable impact assessment of the EU-Indonesia trade agreement, the deal includes provisions resulting in greater liberalisation of the sector⁴. Reducing or slashing tariffs will further increase palm oil imports to Europe, with the corresponding effects on workers and human rights and the environment in Indonesia and the efforts to mitigate climate change.

EU-trade agreements also increasingly tackle so-called non-tariff barriers to trade. These are rules and regulations that can impact trade between two countries, e.g. for reasons of public health or environmental protection. Indonesia has already made clear that it wants to reduce non-tariff barriers for palm oil in Europe to further increase palm oil exports to the EU.

A leaked Indonesian proposal for trade in vegetable oil, as part of the CEPA negotiations, asks for the EU’s recognition of Indonesia’s sustainability standard, ISPO. It also asks for the EU not to impose any import tariff, duty and/or other charge and not to excise any duty or domestic tax on (ISPO) certified palm oil. If this proposal is followed, it would make it very hard for the EU to introduce a palm oil certification scheme, as the European Parliament has recommended.

Current EU trade agreements contain chapters that are aimed at preventing “trade barriers” from arising in the first place. They are aimed at ensuring that future rules do not decrease (but ideally increase) the flow of goods and services between the trade partners. Mechanisms such as regulatory cooperation could make it much more difficult in the future to restrict the import of palm oil into the EU. This dialogue between trade officials happens behind closed doors and sees regulations as barriers to trade rather than a norm to protect people and the planet.

With CEPA, trade negotiators are also discussing investment, especially the controversial EU ISDS system, rebranded ICS (Investment Court System). This exclusive justice system allows multinationals to sue the EU, its Member States or Indonesia. If these were to enact regulations to limit the human, social and environmental damages of palm oil, they could be sued by investors for billions of Euros in an arbitration system that side-lines the regular courts in Indonesia and the EU and that excludes the victims of these companies.

PALM OIL HAS TO BE EXCLUDED FROM CEPA

A variety of initiatives and approaches is needed to solve the issues around unsustainable palm oil cultivation in Indonesia. However, a trade agreement is the wrong place to do this.

The EU’s trade agreements are designed to increase trade flows between the two negotiating partners and reduce barriers that could restrict trade in goods and services. Many cross-cutting chapters of CEPA, as mentioned above, attempt to maximise trade. Dealing with issues such as palm oil, where a reduction in harmful trade flows is needed, would create contradictions with other chapters and provisions in the agreement and is therefore highly unlikely to be effective.

Trade negotiations typically involve trade-offs between the negotiating parties, often on completely unrelated issues and at the end phase of the negotiations. Since palm oil is one of the key issues for the Indonesian side, such trade-offs would not be surprising. This makes establishing a holistic and comprehensive framework that is needed to tackle the issue of palm oil much more difficult within a free trade agreement than outside of it. Furthermore, the departments and officials that negotiate free trade agreements in many cases do not have the exper-

tise and mind-set that is needed to tackle complex sustainability issues and are therefore likely to go for ineffective and insufficient solutions.

Likewise, relying on existing certification standards for palm oil is a dead end. Ample evidence has demonstrated that the two palm oil certification standards that are most important in the Indonesian context, RSPO and ISPO, are completely failing to ensure the sustainability of the palm oil they certify⁵. They lack implementation and enforcement mechanisms and demonstrably fail to protect the interests of local communities, workers, smallholders and the environment. Making increased market access dependent on existing certification standards would only exacerbate the problem of unsustainable palm oil production in Indonesia.

Therefore, Friends of the Earth Europe demands that palm oil should be excluded from the trade negotiations between Indonesia and the European Union.

EXCLUDING PALM OIL FROM THE CEPA NEGOTIATIONS WOULD MEAN:

- No tariff reductions for palm oil and its products;
- Excluding palm oil explicitly from cross cutting chapters, such as regulatory cooperation and investment;
- Excluding the discussion of non-tariff barriers for palm oil as part of the negotiations or the agreement.

An exclusion of palm oil from the negotiations would be a strong signal to the Indonesian government that significant domestic progress is needed before palm oil can be discussed within the framework of a free trade agreement.

3. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1528>

4. Sustainability Impact Assessment (SIA) in support of Free Trade Agreement (FTA) negotiations between the European Union and Republic of Indonesia Draft Inception Report http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156900.pdf (Accessed 14th November 2018)

5. <https://news.mongabay.com/2018/07/rspo-fails-to-deliver-on-environmental-and-social-sustainability-study-finds/>
<https://eia-international.org/indonesias-president-halts-signing-weak-palm-oil-regulation-halts-new-plantations/>

OUR PROPOSAL FOR INDONESIAN AND EU ACTION ON PALM OIL

Indonesia should take the following measures:

- A permanent moratorium on palm oil expansion: Currently there are only moratoria on new plantations on peatland and primary forest. However, a permanent comprehensive moratorium on additional plantations on any kind of land is needed to avoid pushing the production of other agricultural products onto new territories and stop the violation of community land rights.
- Review of existing palm oil plantations: Many existing plantations were the consequence of corruption, resulted from overlapping permits or were simply started illegally, including on high-carbon peatland. A systematic review of all existing permits would ensure that only products from legally planted palms are brought to the market
- No renewal of permits after leases have expired.
- Progress on land reform programme: Two of the reasons for the horrendous social, but also environmental consequences of palm oil production are the unequal distribution of land and the lack of recognition of community land rights. An ambitious land reform programme is therefore needed to start tackling the structural causes of rural deprivation exacerbated by the large-scale palm oil plantations.

The European Union should develop other instruments to reduce the negative impacts of palm oil production. Several options should be pursued simultaneously:

➤ Phase out the use of palm oil through its biofuel policies in the shortest possible time-frame⁶.

➤ Adopt measures to ban illegal and unsustainable palm oil imports, including effective monitoring and enforcement mechanisms.

➤ Require that companies undertake mandatory legality and sustainability due diligence with respect to palm oil and other agro-commodities.

6. <https://www.transportenvironment.org/press/eu-parliament-orders-commission-execute-phase-out-palm-oil-diesel>